



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
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PHILADELPHIA, PA 19107-3323

REGION III  
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PENNSYLVANIA  
WEST VIRGINIA

**July 1, 2016**

**In Response, Please Refer to: 03151179**

Dr. David Goodin  
Superintendent  
Spring-Ford Area School District  
857 South Lewis Road  
Royersford, PA 19468

Dear Dr. Goodin:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint that was filed against the Spring-Ford Area School District (the District). The Complainant alleged that the District discriminated against XXXXXX (the Student) on the basis of sex XXXXXX.

OCR enforces Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX and its implementing regulation.

OCR's investigation of this complaint included a review of information gathered through written documentation provided by the Complainant and the District, as well as interviews conducted with District personnel and the Complainant and the Student. After a careful review of all information obtained, OCR has determined there is sufficient evidence to support a finding of noncompliance with Title IX with respect to the issues raised in this complaint. In order to resolve these violations, the District entered into a resolution agreement approved by OCR on June 24, 2016 (copy enclosed). OCR's findings and conclusions are discussed below.

### **Legal Standards**

#### *Hostile Environment Based on Sex*

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity operated by a recipient. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.<sup>1</sup>

In determining whether this denial or limitation has occurred, OCR examines all of the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred at the school district; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. For example, a single instance of rape is sufficiently severe to create a hostile environment. Title IX also protects all students at recipient institutions from sex harassment, including male and female students.

If a recipient knows or reasonably should have known about sexual harassment that creates a hostile environment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination. A recipient has notice of peer sexual or third party harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject students to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial sexual harassment and the effects of the recipient's failure to respond promptly and appropriately. A recipient's obligation to respond appropriately to sexual harassment complaints is the same regardless of the sex or sexes of the parties involved.

Even if the sexual harassment did not occur in the context of an education program or activity, a recipient must consider the effects of the off-campus sexual harassment when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity because students often experience the continuing effects of off-campus sexual harassment while at school or in an off-campus education program or activity.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sex discrimination, sexual harassment, and sexual

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<sup>1</sup> The applicable legal standards described herein are more fully discussed in OCR's 2011 Dear Colleague Letter on Sexual Violence, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (April 4, 2011); for further clarification on this topic, see "Questions and Answers on Title IX and Sexual Violence," at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (April 29, 2014). See also OCR's 2010 Dear Colleague Letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html> (October 26, 2010), and OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (January 19, 2001).

assault/violence. Title IX does not require a school district to provide separate grievance procedures for sexual harassment complaints, including sexual assault/violence complaints.

A district may use student disciplinary or other separate procedures for these complaints; however, a district's grievance procedures for handling discrimination complaints must comply with the prompt and equitable requirements of Title IX. In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

1. notice to students and employees of the procedures, including where complaints may be filed;
2. application of the procedures to complaints alleging discrimination or harassment carried out by employees, students, and third parties;
3. provision for adequate, reliable, and impartial investigation of complaints, including an opportunity for both the complainant and respondent to present witnesses and other evidence;
4. designated and reasonably prompt timeframes for major stages of the complaint process;
5. written notice to parties of the outcome of the complaint and any appeal; and
6. an assurance that the institution will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the recipient processes complaints, the recipient's Title IX grievance procedures should also include the following in writing:

1. a statement of the recipient's jurisdiction over Title IX complaints;
2. adequate definitions of sexual harassment (which includes sexual assault) and an explanation as to when such conduct creates a hostile environment;
3. reporting policies and protocols, including provisions for confidential reporting;
4. identification of the employee or employees responsible for evaluating requests for confidentiality;
5. notice that Title IX prohibits retaliation;
6. notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
7. notice of available interim measures that may be taken to protect the student in the educational setting;
8. the evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint;
9. notice of potential remedies for students;
10. notice of potential sanctions against perpetrators; and
11. sources of counseling, advocacy and support.

The procedures for addressing and resolving complaints of sexual harassment should be written in language that is easily understood, should be easily located, and should be widely distributed. The Title IX implementing regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law. The recipient is further required, by the Title IX implementing regulation at 34

C.F.R. § 106.8(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s). In addition, OCR's 2011 Dear Colleague Letter on Sexual Violence states that recipients should notify all students and employees of the electronic mail (email) address of the Title IX Coordinator. The coordinator's responsibilities include overseeing the recipient's response to Title IX reports and complaints of sexual harassment, including sexual assault/violence, and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. The coordinator or designee should be available to meet with students, as needed. The Title IX coordinator should not have other job responsibilities that may create a conflict of interest. Also, as noted above, recipients must ensure that employees designated to serve as Title IX coordinators have training or experience in handling sexual harassment, including sexual assault/violence complaints, and in the operation of the recipient's grievance procedures.

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires that recipients notify applicants for employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in its education programs or activities, and that it is required by Title IX not to discriminate in such a manner. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX Coordinator or to OCR.

### **Review and Analysis of District's Policies and Procedures**

OCR reviewed the District's notice of non-discrimination, grievance procedures for resolving complaints under Title IX, and the individual(s) designated for ensuring the District's compliance with Title IX.

#### *Notice of Nondiscrimination Statement*

The District provided the 2014-2015 XXXXXX (the School) Student Handbook, which contains a notice of nondiscrimination. The statement notes that the Spring-Ford School District does not discriminate on the basis of sex, race, religion, national origin or disability in their educational programs, activities, or employment policies as required by Title IX of the Education Amendments, Section 504 of the Rehabilitation Act, Title VII, and the Americans with Disabilities Act. The statement does not include the name or title, and contact information, including email address(es) of the District's employee(s) who serve as the Title IX Coordinator, as required.

#### *The District's Title IX Grievance Procedures*

The District has several policies and procedures relevant to discrimination on the basis of sex:

- *Policy #103 – Nondiscrimination in School and Classroom Practices*
- *Policy #248 – Pupils – Sexual Harassment*
- *Policy # 248.1 – Pupils – Anti-Discrimination and Harassment*

During the course of OCR's investigation, the District submitted Policy 103, indicating that it is the District's written Title IX grievance procedures. The District acknowledged that Policy 103 is not published in the Student Handbook. Policy 103 identifies the Director of Human Resources as the District's Title IX Coordinator; the policy does not, however, provide the contact information for the

Director of Human Resources. Policy 103 prohibits discrimination on the basis of sex, and requires employees, students and third parties who have been subject to discrimination to promptly report the incidents to the building principal, or the Title IX Coordinator if the principal is the alleged harasser.

Policy 103 states that complaints of discrimination shall be investigated promptly and corrective action taken when allegations are sustained. Specific timeframes are provided for various steps of the investigative process. In addition, Policy 103 states that all decisions shall be in writing and copies of all decisions and recommendations shall be furnished promptly to all parties.

Disciplinary sanctions for a violation of the policy are described for school district employees and students, up to and including discharge, suspension or expulsion. Policy 103 further specifies that the District will attempt to honor a complainant's wish for confidentiality, but the need to completely investigate all allegations will be the paramount concern. Policy 103 specifically prohibits retaliation.

Policy 248 provides a definition for sexual harassment and states that any student who alleges sexual harassment, may complain directly to his/her principal or the Director of Personnel (Spring-Ford Area School District, Title IX Coordinator). OCR notes that Policy 248 also contains a grievance procedure for filing a discrimination complaint. The Policy contains some timeframes regarding an informal and formal process, however, it does not provide for the opportunity to provide witnesses or other evidence and there is no requirement that the complainant receive a written response of the outcome.

Policy 248.1 states that it will prevent and eliminate prohibited discrimination and harassment, and that corrective action will be taken as appropriate, including steps to remedy discriminatory effects and to prevent recurrence or retaliation. Complaints of discrimination shall be investigated promptly and confidentiality of all parties shall be maintained. Policy 248.1 specifically prohibits retaliation, and includes more detailed definitions of harassment. If, after appropriate investigation, the District determines that a complaint of discrimination or harassment is founded and violates the policy, the District shall take prompt, corrective action to ensure that such conduct ceases and will not recur.

None of the procedures provided by the District meet the Title IX requirements for grievance procedures. Specifically, with regard to Policies 103, 248, and 248.1, the policies do not contain the following provisions:

- notice to students and employees of the grievance procedures, including where complaints may be filed and the contact information;
- explicit statements that the procedures apply to students, employees, and third parties;
- the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
- designated and reasonably prompt time frames for the major stages of the complaint process;
- written notice to the complainant and alleged perpetrator of the outcome of the complaint; and
- remedying the discriminatory effects on the complainant and others, if appropriate.

In addition, it is confusing as to which procedure should be followed or would apply if a student, parent, employee, or third party brought forth a claim of sexual harassment.

*Title IX Coordinator*

Interviews with District staff members, including the Title IX Coordinator, revealed that the District's Title IX Coordinator only addresses employee to employee complaints. Student on student complaints are assigned to the Head Principal of each respective school. The Head Principal informed OCR that student on student complaints are investigated by the respective House Principal. While it is District policy to notify the Title IX Coordinator of all sexual harassment, sexual assault and sexual violence complaints, she was not apprised of the complaints at issue in this complaint. The House Principal is responsible for receiving and investigating any complaints of sexual harassment that arise.

***Conclusion – District's policies and procedures***

OCR finds that the District's notice of nondiscrimination and grievance procedures do not comply with the requirements of Title IX, at 34 C.F.R. §§ 106.8(b) and 106.9. These compliance concerns will be resolved by the District's fulfillment of the terms of the attached Resolution Agreement signed by the District on June 24, 2016. Under the Agreement, the District will revise its grievance procedures and notice of nondiscrimination, subject to OCR's review and approval, to ensure that they comply with Title IX. The District will also ensure that the individual designated to serve as Title IX Coordinator is specifically trained in how to respond to and investigate complaints of sex discrimination, including harassment and sexual violence, in accordance with the requirements of Title IX and that contact information for this individual is available in the District's publications, including the grievance procedures and notice of non-discrimination.

**Findings of Fact**

xxx – paragraphs redacted – xxx

**Analysis of Hostile Environment**

To determine whether a recipient provided a prompt and equitable resolution to a complaint of sex discrimination, including sexual harassment, OCR considers several factors, such as: the length of time taken to reach a resolution, including whether the recipient met any established timeframes; whether both parties were able to present evidence and witnesses; whether the outcome was communicated to both parties; and whether the recipient will take steps to prevent recurrence and correct discriminatory effects on the victim.

xxx – paragraphs redacted – xxx

Under the Agreement, the District will revise its grievance procedures, subject to OCR's review and approval, to ensure that they comply with Title IX. XXXXXX. When fully implemented, the Agreement will address all of OCR's compliance concerns. As is our standard practice, OCR will monitor the implementation of the agreement until the District is in compliance with the regulations implementing Title IX, at 34 C.F.R. §§ 106.8, 106.9 and 106.31, which were at issue in the case.

This concludes OCR’s investigation of the complaint and should not be interpreted to address the District’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which if released could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions, please contact Linda Thomas, Equal Opportunity Specialist at (215) 656-8553 or by email at [linda.thomas@ed.gov](mailto:linda.thomas@ed.gov) or Jacques Toliver, Team Attorney, at (215) 656-8512 or [jacques.toliver@ed.gov](mailto:jacques.toliver@ed.gov).

Sincerely,

/s/

Melissa M. Corbin  
Team Leader  
Philadelphia Office

cc: Mark Fitzgerald, Esquire

Enclosure